IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (LODG) NO.280 OF 2005

Reminiscent India Television Ltd. ... Petitioners.

vs.

Payal Telefilms Pvt. Ltd. ... Respondents.

AND

ARBITRATION PETITION (LODG) NO.281 OF 2005

Reminiscent India Television Ltd. ... Petitioners.

vs.

Payal Telefilms Pvt. Ltd. ... Respondents.

Ms.Lambay i/b. Lambay & Co., for Petitioners.

Mr.D.D.Madan i/b. Kanga & Co., for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 28th June,2005

P.C.:-

1. By these petition, the petitioners challenges the Award made by the Sole Arbitrator. The only ground of challenge is that the Award has been made without granting petitioners an opportunity of being heard. Perusal of the Award shows that the matter was fixed before the Arbitral Tribunal on several dates during the year 2003 and 2004. In the year 2004 for the first time the matter was fixed before the Arbitral Tribunal on 17th December,2004. The petitioners and its lawyer remained absent before the Arbitrator. Therefore, the learned Arbitrator adjourned the proceedings to 29th January,2005 and directed the respondents to serve notice on the petitioners. The notice was accordingly served on the petitioners. On 29th January,2005, the director of the petitioners company who was attending the matter was sick and petitioners' lawyer was also absent. On that date, an affidavit by way of examination in chief was filed on behalf of the respondents. There was nobody to cross examine the witness. Therefore, the learned Arbitrator proceeded further and made the Award. So far as this aspect of the matter is concerned, the only averment to be found in the petition as contained in paragraph 3(n), which reads as under:-

> "3(n). The Director of the Petitioners, Mr.Subhash Menon, attending to this matter, could not appear before the Learned Arbitrator as he was in Delhi attending to some urgent assignment since December,2004. Further,

due to the lapses of Mr.Ashwin Verma and some other directors including that of Mr.Bagde, the Petitioners were in total doldrums and facing severe financial crisis since 2003 and Mr.Subhash Menon as Managing Director of the Petitioners was making every possible attempt to retrieve the Petitioners Company from the crisis and though, having very good defence in the matter, could not attend to the present matter in dispute.

Apart from the aforesaid factual matrix, Mr.Subhash Menon was suffering from food poisoning and acute high blood pressure from 28th January,2005, and thus was not in a position to attend the hearing before the Arbitrator on 29.1.2005."

In the above quoted paragraph, according to the petitioners, its director Mr.Subhash Menon who was attending the matter, was in Delhi, and the company was facing financial crises, and from 28th January,2005 Mr.Subhash Menon was suffering from food poisoning and blood pressure. But no documents are placed on record to substantiate the said statements made in the above paragraph. So also, there is no explanation to be found in the petition. If Mr.Subhash Menon, the Director of the petitioners was not in a position to attend the matter before the Arbitrator, why the Advocate engaged by the petitioners did not remain present before the Arbitrator. The petitioners

were represented by the Advocate before the Arbitrator, therefore, if Mr.Subhash Menon, the Director of the Petitioners was not in a position to attend, the Advocate could have remained present and sought adjournment, but it was not done. In the petitions, there is no explanation given as to why the Advocate did not remain present In these circumstances, therefore, in my opinion, no fault can be found with the learned Arbitrator in proceeding further in the matter and making the Award. The petitions thus have no substance and therefore, the petitions are rejected.